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OFFICE OF THE CITY CLERK
OAKLAND
2012 JUL 31 PM 1:54

AGENDA REPORT

TO: DEANNA J. SANTANA

FROM: Howard A. Jordan

SUBJECT: Burke Williams Sorenson, LLP
Contract Amendment

DATE: July 20, 2012

City Administrator
Approval

Deanna Santana

Date

7/31/12

COUNCIL DISTRICT: City-Wide

RECOMMENDATION

Staff recommends that the Council approve a resolution authorizing the City Administrator to amend the contract with Burke Williams Sorenson, LLP to 1) increase the contract amount from one hundred thousand dollars (\$100,000) to two hundred seventy five thousand dollars (\$275,000) and 2) complete additional administrative investigations of police misconduct complaints resulting from *Occupy Oakland* events in the City of Oakland.

REASON FOR URGENCY

This resolution is being submitted due to the urgency and time-sensitivity of *Occupy Oakland* high profile and complex investigations, and this action cannot wait until the City Council reconvenes in September, 2012. The majority of cases assigned to Burke Williams Sorenson, LLP must be completed by late August 2012 in order to comply with a Court Order issued in the *Allen v. City of Oakland, et al.*, federal court case. Reassigning these cases and starting with a new investigator would jeopardize the City's ability to comply with legal and court mandated deadlines. Compliance with the Court Order and the 3304 deadlines is a top priority of the City.

Since October 25, 2011¹, the Oakland Police Department Internal Affairs Division has received numerous misconduct complaints against members of the Oakland Police Department (OPD) as a result of *Occupy Oakland* protests and events. Due to the volume, sensitivity, and complexity of these complaints, the need existed to increase the Department's investigative capacity to ensure compliance with California Government Code 3304 deadlines for imposing discipline.

¹ On Tuesday, October 25th, the Oakland Police Department removed the Occupy Oakland encampment due to public safety concerns surrounding bio hazardous materials, fire safety, and violations associated with unlawful camping in a public place, which resulted in numerous reports of uses of force.

On May 1, 2012, Judge Thelton Henderson in the case of *Allen v. City of Oakland, et al.*, ordered the City to provide a specific plan on how it would address all outstanding internal investigations stemming from Occupy Oakland activities prior to December 31, 2011, including the completion of all investigations within the 3304 deadline. The City's plan, which was adopted by the Court on June 18, 2012 with certain modifications, included the hiring of outside investigators and law firms to complete the most high profile and complex investigations.

Upon review of the originally assigned cases, agreement to add five additional cases to the scope of work, and a Court Order dated June 18, 2012 reducing the time for investigators to complete the investigations, Burke Williams Sorenson, LLP determined that \$100,000 would not be sufficient to complete a thorough investigation within the new timelines ordered by the Court. The cases they were originally assigned and the cases added to their scope of work will require them to interview over 50 OPD personnel, complainants and witnesses. Due to the complexity and enormity of the investigations, the City Administrator seeks Council's authority to increase their contract in the amount of \$175,000, for a total contract amount not to exceed \$275,000.

OUTCOME

Administrative investigations of misconduct complaints related to Occupy Oakland will be conducted thoroughly, objectively, and within the deadlines required by California Government Code 3304 and the June 18, 2012 Court Order.

BACKGROUND/LEGISLATIVE HISTORY

On October 25, 2011, the City removed the initial *Occupy Oakland* encampment from Frank Ogawa Plaza which resulted in numerous protests, a general strike, and a port shut down. During the course of these *Occupy* events, numerous misconduct complaints were filed against members of the Department. In order to impose discipline, state law requires internal investigations of misconduct complaints to be completed within 365 days. Per the Court Order dated May 1, 2012, Judge Thelton Henderson required the City to submit a plan for completing the investigations stemming from Occupy Oakland activities, to include provisions for completion of all investigations within the California Government Code 3304 deadline. The City's plan included the use of outside private investigators and law firms to conduct the most high profile and complex investigations. The plan submitted to the Court was subsequently adopted on June 18, 2012, with some modifications including an expedited completion date of the investigations. The Judge ordered all investigations included in the City's plan to be completed and submitted to the Internal Affairs Division no later than 60 days prior to the expiration of the deadline under California Government Code section 3304, or within 120 days of the date of the order for cases in which the 3304 period is tolling.

The City conducted a competitive solicitation process (Request For Proposals) for employee investigative services to conduct investigations of misconduct complaints stemming from Occupy Oakland activities. Five firms were selected:

- Renne Sloan Holtzman Sakai, LLP
- Burke Williams Sorenson, LLP
- DR Associates International
- Belcher Ehle Medina & Associates, Inc.
- Michael Glenn Investigations

Per Oakland Municipal Code Section 2.04.020 "Authority of the City Administrator," states that the City Administrator shall have authority to bind the City by written contract or purchase order without previous specific action of the Council for purchases of supplies and services or a combination up to one hundred thousand dollars in any single transaction or term agreement and/or for the purchase of Professional Services up to one hundred thousand dollars (\$100,000.00) in any single transaction or term agreement. The City Administrator exercised that authority in response to the Court Order and the critical time sensitive and complex needs generated by the actions and events related to *Occupy Oakland*. Each contractor was awarded a contract for a not to exceed amount of \$100,000.

The City executed five contracts to conduct administrative misconduct investigations related to *Occupy Oakland*; each contract was for a not to exceed amount of \$100,000. Each firm was assigned cases prior to a comprehensive analysis of the extent of services that may be required for each case. Burke Williams Sorenson, LLP, has determined that significant work is required on the originally assigned cases given their complexity and the large number of interviews required. In addition, they have agreed to investigate additional cases to increase the efficiency of the investigations. Therefore, to complete their originally assigned cases within the deadlines ordered by the Court, as well as their newly assigned cases, additional funds are needed. The City Administrator seeks Council's authority to increase the contract with Burke Williams Sorenson, LLP in the amount of \$175,000 for a total amount not to exceed \$275,000.

ANALYSIS

An extraordinary number of misconduct complaints were generated from *Occupy Oakland* protests, marches, and general strikes. The City did not have the capacity to investigate many of the complaints within the NSA required timelines. Per recent Court Orders (dated May 1, 2012 and June 18, 2012), the City must complete them within the California Government Code 3304 deadline. As set out in the City's plan submitted to the Court, outside investigators and law firms were hired to complete the most high profile and complex investigations. The City hired five contractors (three private investigators and two law firms) to increase the capacity needed to complete investigations stemming from Occupy Oakland activities within State mandated deadlines.

Burke Williams Sorenson, LLP, one of the two law firms hired to perform misconduct investigations, determined that additional funds were necessary to complete the investigations assigned to them given the complexity and sensitivity of the cases, and the large number of interviews necessary to ensure a thorough investigation. In addition, the Court Order reducing the time for completion caused their assigned investigations to be due more than three weeks earlier than originally planned.

PUBLIC OUTREACH/INTEREST

It is in the City's best interest and that of the Oakland residents to comply with the Federal Court Order and to ensure that all citizen complaints are investigated thoroughly and objectively.

COORDINATION

Other City Agencies affiliated with this request include: The Office of Contracts and Compliance, the City Attorney's Office, the Budget Office, and the Office of the City Administrator.

COST SUMMARY/IMPLICATIONS

AMOUNT OF RECOMMENDATION/COST OF PROJECT: \$275,000

SOURCE OF FUNDING:

Funds for this contract shall be drawn from the General Fund 1010, Organization 101120, Account 54919, Project 0000000 and Program PS02. The approved FY 2012-13 budget appropriated \$750,000 for the investigation of Internal Affairs cases. This increase would come from those previously budgeted funds.

SUSTAINABLE OPPORTUNITIES


Economic: Investigating citizen complaints and holding police personnel accountable for violations of the law and serious misconduct increases public confidence and improves public relations with the community, and reduces liability and risk for the City.

Environmental: There are no environmental opportunities.

Social Equity: Both citizens and our sworn personnel deserve to have a Police Department that provides highly professional services in ensuring the public safety of the residents of Oakland. Complaints filed against police personnel must be investigated thoroughly and timely to ensure public confidence and good relations with the community.

For questions concerning this report, please contact Deputy Chief Sean Whent at (510) 238-3568.

Respectfully submitted,

for 

Howard A. Jordan
Chief of Police
Oakland Police Department

Prepared by:
Ms. Kristin Burgess
Policy Program and Performance Auditor
Office of Inspector General

Item: _____
Council/Mayor Summer Recess Agenda
August 14, 2012

2012 JUL 31 PM 1:54 **RESOLUTION No. _____ C.M.S.**

RESOLUTION AUTHORIZING THE CITY ADMINISTRATOR TO AMEND THE CONTRACT WITH BURKE WILLIAMS SORENSON, LLP TO COMPLETE ADDITIONAL INVESTIGATIVE WORK AND INCORPORATE ADDITIONAL INVESTIGATIONS OF POLICE MISCONDUCT CLAIMS RESULTING FROM OCCUPY OAKLAND PROTEST INCIDENTS, INCREASING THE BUDGET BY ONE HUNDRED AND SEVENTY FIVE THOUSAND DOLLARS (\$175,000) FOR A TOTAL CONTRACT AMOUNT OF TWO HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$275,000)

WHEREAS, the City has received numerous police misconduct complaints related to Occupy Oakland protest incidents which the City must complete within the timeline provided in California Government Code 3304; and

WHEREAS, the Court in *Allen v. City of Oakland, et al.*, issued an order on June 18, 2012 which mandates that all outstanding internal investigations stemming from Occupy Oakland activities prior to December 31, 2011 be completed 60 days in advance of the 3304 deadline or within 120 days of the date of the order for cases in which the 3304 period is tolling; and

WHEREAS, the City lacks qualified personnel to perform the work and needs additional capacity to conduct the investigations and ensure they are completed thoroughly and within required timelines; and

WHEREAS, the City Council finds and determines that the services authorized hereunder are professional, scientific or technical in nature, are temporary, and shall not result in the loss of employment or salary by any person having permanent status in the competitive services; and

WHEREAS, under the contract authority of the City Administrator pursuant to Oakland Municipal Code Section 2.04.020, and following an RFP competitive process the City contracted with several vendors; and entered into a \$100,000 contract with Burke Williams Sorenson, LLP, to complete administrative investigations related to Occupy Oakland police misconduct complaints in order to meet the legal and court order requirements related to these investigations; and

WHEREAS, under the existing contract Burke Williams Sorenson, LLP is required to conduct the administrative investigation of 10 cases, and after further review of the work involved it is necessary to increase the budget for Contractor to complete the case assignments and incorporate 5 additional investigations into the scope of work; and

WHEREAS, it is in the best interests of the City to amend this contract in order for City to achieve more efficiency in investigating Occupy Oakland police misconduct cases and complete the investigations within the timeline imposed by court order and as required by law; and

WHEREAS, sufficient funds have been budgeted for this contract by the Oakland Police Department; Fund 1010, Organization 101120, Account 54919, Project 0000000, Program PS02; now therefore be it

RESOLVED: That the City Administrator is authorized to increase the budget for Burke Williams Sorenson, LLP in the amount of \$175,000 for a total contract amount of 275,000.00, to complete the assigned cases and include additional cases involving allegations of police misconduct stemming from Occupy Oakland events; and be it

FURTHER RESOLVED: That the City Administrator or her designee is authorized to take all actions and carry out any financial actions necessary to fulfill the intent of this Resolution and accompanying Report, including completing all required negotiations, certifications, assurances, and documentation required to accept, modify, extend and/or amend this contract for services, except for any increase in the contract amount, without returning to the City Council; and be it

FURTHER RESOLVED: That the City Administrator or her designee will provide regular updates to the City Council concerning changes or modifications to the contract with Burke Williams Sorenson, LLP; and be it

FURTHER RESOLVED: That the City Administrator or her designee shall ensure that copies of fully executed contracts and amendments are placed on file with the Office of the City Clerk; and be it

FURTHER RESOLVED: That the City Attorney shall review and approve, for form and legality, any and all contract amendments and modifications.

IN COUNCIL, OAKLAND, CALIFORNIA, _____, 20____

PASSED BY THE FOLLOWING VOTE: BROOKS, BRUNNER, DE LA FUENTE, KAPLAN, KERNIGHAN, NADEL, SCHAAF, and PRESIDENT REID

AYES-
NOES-

ABSENT-

ABSTENTION-

ATTEST: _____
LaTonda Simmons
City Clerk and Clerk of the
Council of the City of Oakland, California